

Entered on Docket

March 31, 2009

GLORIA L. FRANKLIN, CLERK
U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

Signed: March 27, 2009

EDWARD D. JELLEN
U.S. Bankruptcy Judge

1 ERIC A. NYBERG, ESQ.
 (Bar No. 131105)
 2 CHARLES N. BENDES, ESQ.
 (Bar No. 70126)
 3 CHRIS D. KUHNER, ESQ.
 (Bar No. 173291)
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10 UNITED STATES BANKRUPTCY COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 In re

13 A.F. EVANS COMPANY, INC.,

14 Debtor.

15 Case No. 09-41727 EDJ

16 Chapter 11

17 ORDER APPROVING
 STIPULATION REGARDING
 CASH COLLATERAL AND
 ADEQUATE PROTECTION ON
 AN INTERIM BASIS

18 Date: March 12, 2009

19 Time: 2:30 pm

Ctrm: 215

20 This matter came before the Court on Notice of Motion or Approval Of Cash Collateral
 21 Stipulation And Granting A Replacement Lien And Other Adequate Protection ("Motion"). The
 22 Court having reviewed the Motion and having found that good and sufficient notice of the Motion
 23 and opportunity to be heard thereon has been given, opposition to the Motion having been
 24 considered and good cause appearing;

25 IT IS HEREBY ORDERED as follows:

26 1. The Court finds that the Debtor's use of cash collateral pending a final hearing on
 27 the Stipulation is necessary to avoid immediate and irreparable harm to the Debtor's estate and is
 28 appropriate under Rule 4001(b) of the Federal Rules of Bankruptcy Procedure, and the Motion is

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1 hereby GRANTED on an interim basis only subject to further hearing as set forth below, and
 2 subject to the terms and conditions in the Stipulation Regarding Cash Collateral and Adequate
 3 Protection that is the subject of the Motion, as amended by the Amendment To Stipulation
 4 Regarding Cash Collateral And Adequate Protection (as amended, the "Stipulation").

5 2. On an interim basis, pursuant to the provisions of §§ 361, 363(c), and 363(e)
 6 of Title 11 of the United States Code ("Bankruptcy Code"), §11 U.S.C. § 101, et seq, and
 7 subject to each of the limitations set forth below in the Stipulation, the Debtor is hereby
 8 authorized to use and disburse "cash collateral" as that term is defined in Bankruptcy Code
 9 § 363(a) pursuant to the terms of the Stipulation and the budget attached as Exhibit "A" to
 10 the Stipulation ("Budget") to the limited extent permitted by the terms of the Stipulation,
 11 through and including April 2, 2009.

12 3. City National Bank shall be entitled to all of the protections set forth in the
 13 Stipulation (except as provided in Paragraph 8 below), including, without limitation, the
 14 replacement liens, adequate protection payments and administrative expense priority set forth
 15 therein at the times and subject to the limitations stated in the Stipulation and the Budget.

16 4. This order approving the Stipulation on an interim basis shall be without prejudice
 17 to the rights of any party in interest seeking further orders of this Court regarding the Stipulation.

18 5. A continued hearing on approval of the Stipulation shall be held on April 2, 2009 at
 19 2:30 pm in Courtroom 215 of the United States Bankruptcy Court located at 1300 Clay Street,
 20 Oakland California.

21 6. This interim order shall not prohibit CP III Evans, LLC from pursuing any rights it
 22 may have under any security interest in or assignment of any property that is not property of this
 23 bankruptcy estate, and this order does not alter or modify any contractual rights and duties
 24 between non-debtor parties or between the Debtor and non-debtor parties, except as set forth in the
 25 Stipulation and this order.

26 7. To the extent that the Debtor consumes any cash collateral in which the Court
 27 determines CP III Evans, LLC has a perfected first priority lien, and to the extent such use results
 28 in the diminution of the value of CP III Evans, LLC's interest in such cash collateral, CP III

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1 Evans, LLC is granted a replacement lien in an amount equal to such diminution, which lien shall
2 attach to the personal property of the Debtor, whether now owned or existing or hereafter
3 acquired, created or arising, and all products and proceeds thereof, of the same type and character,
4 as the Debtor's property from which such cash collateral was generated (but not including any
5 rights of the Debtor to avoidance actions under Chapter 5 of the Bankruptcy Code); provided that
6 nothing in this order shall operate as a waiver of or modification of any parties rights which are
7 expressly reserved, except as set forth in the Stipulation and this order.

8 8. This interim order does not approve the provision of Paragraph 25 of the
9 Stipulation and does not constitute a final order for the purposes of Paragraph 23 of the
10 Stipulation, and the Court reserves for further hearing the extent to which the Court may approve
11 the Paragraph 25 and the extent to which any subsequent order may constitute a final order for
12 purposes of Paragraph 23. For so long as any subsequent Interim Order at all times remains in
13 effect approving the Stipulation on the terms contained in this Order, no Event of Default shall
14 arise under Paragraph 9(i) of the Stipulation if a Final Order, as defined therein, is not entered
15 within 30 days of Petition Date.

16
17 Approved As To Form:

18 _____
19 /s/ Frank T. Pepler _____
Frank T. Pepler
Attorneys for City National Bank

20
21 _____
22 /s/ Lynette C. Kelly _____
Lynette C. Kelly
United States Department of Justice
Office of the United States Trustee - Oakland
23 Attorneys for the Acting United States Trustee

24
25 _____
26 /s/ Robert Kaplan _____
Robert Kaplan
Attorneys for Union Bank

1 /s/ Alan Feld _____
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3 Attorneys for CP III Evans, LLC
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***END OF ORDER**

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